

OPINION & ORDER
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Gwin, J.

the Supreme Court of Ohio because Moncrief first raised these grounds as part of his delayed application to reopen his direct appeal – that the state appellate court denied – and did not seek a review of this denial in the Supreme Court of Ohio. [[Id. at 15.](#)] Moreover, the Magistrate Judge determined that Moncrief did not present evidence excusing this procedural default because he did not show cause and actual prejudice or demonstrate that failure to consider his habeas claims would result in a fundamental miscarriage of justice. [[Id. at 15-17.](#)] As a result, the Magistrate Judge found that federal habeas review of Moncrief’s claims was barred. [[Id. at 17.](#)] The Petitioner has not objected. The Court **ADOPTS** Magistrate Judge Baughman’s Report and Recommendation.

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of a Report and Recommendation to which the parties have made an objection. [28 U.S.C. § 636\(b\)\(1\)\(c\)](#). Parties must file any objections to a Report and Recommendation within ten days of service. [[Id.](#)] Failure to object within this time waives a party’s right to appeal the magistrate judge’s recommendation. [FED. R. CIV. P. 72\(a\)](#); *see also Thomas v. Arn*, 474 U.S. 140, 145 (1985); [United States v. Walters](#), 638 F.2d 947, 949-50 (6th Cir. 1981). Absent objection, a district court may adopt the magistrate’s report without review. *See Thomas*, 474 U.S. at 149. Moreover, having conducted its own review of the parties’ briefs on the issue, the Court agrees with the conclusions of the Magistrate Judge.

Accordingly, the Court adopts in whole Magistrate Judge Baughman’s findings of fact and conclusions of law and incorporates them fully herein by reference. The Court thus **DENIES** the Petitioner’s § 2254 petition. Further, the Court certifies, pursuant to [28 U.S.C. § 1915\(a\)\(3\)](#), that an appeal from this decision could not be taken in good faith, and no basis exists upon which to issue

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a certificate of appealability. [28 U.S.C. 2253\(c\)](#); [Fed. R. App. P. 22\(b\)](#).

IT IS SO ORDERED.

Dated: December 11, 2008

s/ James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE